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MAY 28 2003

Federal Communications Commission
Office of Secretary

May 28, 2003

EX PARTE -- BY HAND

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
c/o Vistronix, Inc.
236 Massachusetts Avenue, N.E.
Suite 110
Washington, DC 20002

RE: Notice of Ex Parte Presentation: In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Dkt. No. 02-278

Dear Ms. Dortch:

Today, May 28, 2003, Erick Laine, Chairman of Vector Marketing Corporation ("Vector"), accompanied by Judith L. Harris and James P. Schulz of Reed Smith, LLP, Vector's attorneys, met with Chairman Powell and Marsha McBride, Chief of Staff, to discuss the above-captioned proceeding. Subsequent to that meeting, Mr. Laine, Ms. Harris and Mr. Schulz met with Commissioner Abernathy, Matthew Brill, Senior Legal Advisor to Commissioner Abernathy, and Shannon Torgerson, Legal Intern.

The substantive matters discussed in both meetings are set out in the attached presentation, a copy of which was given to each participant during the meetings. The original and two copies of this notice and the attached presentation are being submitted pursuant to Sections 1.1206(b)(1) and (2) of the Commission's Rules, 47 C.F.R. §1.1206(b)(1),(2).

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ReedSmith

If you have any questions regarding this correspondence, please do not hesitate to contact us.

Respectfully submitted,

VECTOR MARKETING CORPORATION

By: 

Judith L. Harris
James Philip Schulz
REED SMITH, LLP

Its Attorneys

cc: Michael K. Powell, Chairman
Marsha McBride, Chief of Staff
Commissioner Abernathy
Matthew Brill
Shannon Torgerson

Do-Not-Miss on Do-Not-Call

Presentation of Vector Marketing Corporation
to
FCC Commissioners and Staff

Wednesday, May 28, 2003

What Is Vector Marketing?

- Vector is the North American marketer of **Cutco** products (high end cutlery)
- Vector is a wholly-owned subsidiary of **Alcas Corp**
 - Formed by ALCOA and W.R. Case & Sons Cutlery in 1948 - purchased by mgmt in 1982
- Cutco is manufactured by Cutco Cutlery Corp (also an Alcas subsidiary)
 - Employs 700 Steelworkers in Olean, NY

Vector's Marketing Method

- Each year, Vector recruits thousands of college students across the country and trains them as sales people
 - Company is model for several universities' business courses; academic credit for participation (Purdue, Illinois State, others)
 - Company's methods also used as case studies in several universities' course materials (U. of Texas, Boston College, Boston U., others)
- Reps are independent "Direct Sellers"
 - use telephones to set appointments--not to sell
 - call **ONLY** "personal referrals"
 - sales made through face-to-face presentations/demonstrations in the home
- Cutco products have been marketed in this same fashion for more than 30 years

Vector Is NOT Part of the Problem

Nature of Calls is Different

- Calls made ONLY to family, friends and “personal referrals”
- Calls made ONLY to set up appointments
 - selling is done through face-to-face demonstrations in the home -- **NOT OVER THE PHONE**

Method of Calling is Different

- No autodialers
- No predictive dialers
- No recorded messages
- No “blast fax” programs
- No “boiler room” operations
- **NO ANONYMITY**

Response to Calls is Different

- Calls are not unwanted
- Objective case: Vector's "Close Rates"
 - more than 50% close rate: phone calls-to-appointments
 - 1.9 calls per appointment, or a 52.6% close rate
 - approx. 50% close rate: appointments-to-sales
 - approx. 30% close rate: phone calls-to-*in-person*-sales
 - 3.6 calls per sale, or a 27.8% close rate
 - Average close rates for telemarketing industry (untargeted campaigns, phone calls-to-sales) is 1% - 3%; similar rates for spam, blast faxes
- Subjective case: Calls come from friends, relatives, *personal* connections

Why Does Vector Care About the Do-Not-Call List?

- The list could destroy Vector's business
 - By prohibiting calls to customer base
 - Customers tend to be affluent and well-educated; will be among first to “sign up”
 - Reps will have to check the list before calling their own friends and relatives
 - Since friends and relatives will be on the list, reps will be **forbidden to call their own friends and family members!**
 - **Wisconsin case: out of 9,132 *purchasers* in 2002, 4,757 (52.1%) were on that state's list in 2003!!**

Why Does Vector Care? (cont'd)

- The list could destroy Vector's business
 - By tainting Vector's activities as undesirable
 - Families, college students will shy away
 - By hindering Vector's ability to recruit
 - Perception of increased level of difficulty
 - Economic incentive will be severely impaired

Why Should YOU Care About Vector's Problem?

- Overbreadth
 - If Vector is not part of the problem, Vector should not be swept under the rule's broad reach
- Avoid duplicating (and perhaps resolve) quandary created by FTC

“Central Hudson”

- Establishes Constitutional test for restrictions on *commercial* speech
- Four-part test:
 - illegal or misleading? (Restrictions OK)
 - *Substantial* government interest?
 - Does restriction *directly* advance government interest?
 - **Is restriction *more extensive than necessary* to achieve government interest?**

Central Hudson's Fourth Prong

- Restriction must not be “more extensive than is necessary to serve [the government’s asserted] interest”
- The asserted governmental interest under the TCPA is the protection of residential telephone subscribers’ “privacy right to avoid receiving telephone solicitations to which they object.” 47 U.S.C. §227(c)(1).

Vector's Calls

- Are not “solicitations” to which consumers object
 - calls are to friends and family; not anonymous
 - half of all calls from Vector's reps result in an invitation to come to the consumer's home
 - by contrast, 97%-99% of telemarketing calls GO NOWHERE!
 - 52% of Cutco purchasers on Wisconsin's No-Call list demonstrates difference between wanted and unwanted calls
- Therefore, no governmental interest in prohibiting Vector's calls

The proposed rule extends to:

- All calls that have commercial content, regardless of whether or not they contain “solicitations to which [consumers] object”:
 - a son’s call to his aunt
 - a daughter’s call to her friend’s newly-engaged sister

Therefore:

- This rule, as applied to Vector's reps, is more extensive than necessary to directly advance the Government's asserted interest in protecting consumers' right not to have their privacy invaded by unwanted calls

FTC's Solution

- FTC is “on board” in principle
 - FTC stated that it does not intend to enforce do-not-call provisions of amended TSR against companies like Cutco/Vector (set out in letter from FTC to Rep. Houghton)
 - substance of letter likely will be incorporated into forthcoming “Compliance Guidelines for Businesses”
- **BUT . . .**

Enforcement Intentions \neq Legality

- What's wrong with half a loaf?
 - Vector's training is often reps' first exposure to business world
 - Vector cannot train its reps by telling them:
“You don't have to follow the law because you won't be targeted for enforcement.”

Vector's Solution

- Narrowly-crafted exemption
- Applies only to “direct sellers”
 - who use telephones solely to set appointments
 - whose entire sales presentation is face-to-face
- Applies only to calls to “personal referrals”
 - called party must be known to caller or referring person
- Limited to 20 calls per day

Vector's Solution And Congressional Intent

- “*Do-Not-Call Implementation Act*” requires harmonization of FCC and FTC rules
- Exemption in FCC’s rules easily could be harmonized with FTC’s stated position

End result would be a narrowly
tailored rule at both agencies

Questions?